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leaving the courts to deal with the abuse of corporate power as they do with that of the individual's contractual rights, on grounds of public policy and not corporate incapacity. See *The Unauthorized or Prohibited Exercise of Corporate Power*, by George Wharton Pepper, 9 HARV. L. REV. 255. Similar grounds of policy would explain the refusal of American courts to enforce corporate liability where an association actually formed has not substantially complied with the requirements of the law.

THE JURY SYSTEM IN THE UNITED STATES AND ITS EXTENSION TO THE PHILIPPINES. — Probably no recent address on a legal subject has provoked such widespread discussion as that delivered last June at the Commencement exercises of the Yale Law School. *The Administration of Criminal Law*, by William H. Taft, 15 Yale L. J. 1 (Nov., 1905). Secretary Taft points out that while the civil law has been content to leave much to the consciences of rulers, the common law protects the individual by insisting not so much on general principles as on forms of procedure. The most important of these is the right of trial by jury. Yet, though our Constitution requires issues of fact in civil cases at law involving more than twenty dollars to be tried before a jury, much the same issues in cases in equity are tried without one. Since the abolition by many of our codes of procedure of the distinction between law and equity in civil actions, a lawyer is needed to tell whether a suit brought is at law or in equity. Further, in more than half the civil suits a jury is dispensed with by consent of the parties. Certainly, under these conditions, the constitutional requirement of a jury trial cannot be said to rest on any fundamental principles; nor would the abolition of the requirement, with proper appeal, deprive a litigant of an impartial hearing. Consequently, as Secretary Taft questions the value of the system even in the United States, he is opposed to introducing it into the Philippines in civil suits. To introduce it in criminal cases would, similarly, be unwise. Criminal procedure in this country presents a lamentable contrast to that in England, where by the judges' retention of control over the jury, the lack of appeal, and the better quality of men available for jury service, a reputation for certainty of punishment is maintained. Here much legislation prevents the judge from being more than a moderator at a religious meeting. He is prohibited from commenting on the facts, which is essential if instructions are to be of value, and no opportunity is given him to dispel the sentimental atmosphere too often created by the attorney for the accused. The number of peremptory challenges allowed the defendant operates against securing as jurors men of force or of character. The ease of appeal on the slightest technicality, which stands between the defendant and his just conviction, is another cause of the laxness of administration of our criminal laws. When these are the conditions surrounding trial by jury in the United States, to extend it to the Philippines, where conditions are less favorable, would be impolitic. The Filipinos are still an ignorant people, and the juror in deciding between the state and the accused would be moved by every motive other than that of the well-being of the state. Moreover, the civil law, in force in the islands, lacks a code of evidence, almost an essential of the jury system.

While Secretary Taft's long experience and soundness of judgment entitle his opinion to great weight, his criticisms of the jury system have brought forth many protests, based on widely divergent grounds. One writer insists that the judge's functions are properly limited to those of moderator, and that therefore our restrictions have been wise. *Observations on Secretary Taft's Text*, by John J. Crandall, 28 N. J. L. J. 267. The prevailing opinion seems to be that while the shortcomings of our criminal procedure are undoubted, and to introduce the jury into the Philippines would be unwise, the Secretary of War has been too warm in his denunciation of the American jury trial. The limitations upon the power of the judge; the technicalities taken advantage of on appeal; the number of peremptory challenges and the many exemptions allowed,

which result in excusing from jury duty many of those best qualified to act in the increasing complexities of litigation, when a higher standard of intelligence among the jurors is needed — all these, though defects, are regarded not as defects in the system, but in its administration, and, as such, reasons not for discarding the jury system, but for cleansing it of these growths upon it. One judge, or a number of judges, would not, it is suggested, be more satisfactory in deciding issues of fact than the jury of twelve; and to the unique power given our judiciary to declare legislative acts unconstitutional, the jury power, born of the sovereignty of the people, should not be added. *The Jury System*, by William H. Holt, 67 Alb. L. J. 298. *Cf. The Administration of the Jury System*, by Henry B. Brown, 17 Green Bag 623.

GOVERNMENTAL REGULATION OF PRICES. — A writer in the Green Bag touches upon a subject often discussed but always of interest and importance. *Governmental Regulation of Prices*, by Eugene A. Gilmore, 17 Green Bag 627 (Nov., 1905). The mediæval method of bringing into effect just prices, wages, and hours, says Mr. Gilmore, was by fixing them through the consultation of experts, whose estimates were enforced by positive law. In England the cost of the necessities of life was made subject to regulation as early as the fourteenth century, in the days of the Black Death. Subsequently such matters as the binding of books and the sale of beer barrels and of long bows came under supervision. In the New World the power of government to legislate upon prices and wages was recognized by comprehensive statutes passed in Massachusetts (1777) and in New York (1778). Neither in England nor in America, however, were laws of this character successfully enforced.

Modern public opinion, viewing general interference with private business as a deprivation of liberty and property prohibited by the Constitution, relies upon the regulating force of free competition. Yet the efficacy of the police power remains unimpaired by the Fourteenth Amendment, and under it the case of *Munn* v. *Illinois* (94 U. S. 113) and decisions following enunciated the right of the state to regulate prices and rates in all businesses "affected with a public interest." Interpreting this as sanctioning interference whenever "essential or desirable for the public good," Mr. Gilmore concludes, "if dominant public opinion should favor a return to the paternalistic conditions of mediæval England, or to some modified and less extensive control of private business, such as reasonable restrictions on the hours of labor, and prohibitions on the manipulation of prices, . . . the Constitution should not be construed to check the working out of such opinion." Mr. Gilmore's rule of loose constitutional construction is that toward which the dissenting minority in the Warehouse Cases believed the Supreme Court to be tending. See *Munn* v. *Illinois*, 94 U. S. 113, 136; *Budd* v. *New York*, 143 U. S. 517, 548; *Brass* v. *North Dakota*, 153 U. S. 391, 405. It has, however, not yet met with the approval of constitutional lawyers, who seem to require a rather intimate connection between the business which it is sought to subject to legislative interference and some one of the very general objects sought by the police power, namely, public safety, health, morals, or welfare. See COOLEY, CONST. LIMS. 870 *et seq.* The authorities probably warrant no more definite statement than that rates are subject to regulation in those businesses possessed of the elements of a legal or a virtual monopoly. See *The Law of the Public Callings as a Solution of the Trust Problem*, by Bruce Wyman, 17 HARV. L. REV. 156, 217. Certainly the courts show little tendency to set aside, under the excuse of an unlimited police power, all constitutional safeguards against interference with private enterprise, and it is probable that any new business will be made subject to regulation only so far as such regulation becomes essential by reason of peculiar circumstances attending it. See FREUND, POL. POWER, § 378; *Public Service Company Rates and the Fourteenth Amendment*, by N. Matthews, Jr., and W. G. Thompson, 15 HARV. L. REV. 249; *Opinions of the Justices to the House of Representatives*, 55 Mass. 598; 182 *ibid.* 605.